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Tariff Refunds: Additional Refund Claims on the Horizon?

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The Supreme Court's decision in *Learning Resources, Inc. v. Trump* significantly reshaped the legal landscape for U.S. tariffs by holding that the International Emergency Economic Powers Act ("IEEPA") does not authorize the President to impose tariffs. As a result, many of the tariffs imposed pursuant to IEEPA—including the broad "Liberation Day" reciprocal tariffs and certain country-specific tariffs tied to the influx of illegal drugs and trade deficits—were invalidated. The decision was notable because it clarified that IEEPA is not itself a tariff statute.

The invalidation of the IEEPA tariffs has created the potential for significant refunds for tariffs that had already been paid. Importers that paid duties under the affected tariff programs may have claims to recover those amounts, potentially representing substantial cash recoveries for businesses with significant import volumes. While the procedural path for obtaining refunds continues to develop, many importers have begun evaluating whether they should preserve claims and seek reimbursement for duties paid under a tariff regime that has now been held unlawful. In addition, secondary markets have emerged for monetizing refund claims – that may be uncertain with respect to both accessibility and timing – by selling or assigning all or a portion of their expected recoveries to third parties at a discount, allowing them to realize immediate liquidity rather than waiting for the claims process or related litigation to conclude.

Recent Developments

The administration has responded by relying on other statutory authorities that expressly contemplate tariffs in certain circumstances – particularly Section 301 of the Trade Act. In many instances, the practical effect has been to replace tariffs that were previously justified under IEEPA with tariffs imposed under different legal authorities. Although the underlying policy objectives remain largely unchanged, the legal rationale supporting many of the tariffs has shifted from emergency economic powers to more traditional trade authorities grounded in national security, unfair trade practices, and other congressionally authorized bases.

Whether these replacement tariffs will ultimately withstand judicial review remains an open question. Section 301 expressly authorizes tariffs, but also imposes certain requirements – for example, Section 301 requires an investigation by the Office of the U.S. Trade Representative finding that a foreign country's acts, policies, or practices are "unreasonable or discriminatory," and "burden or restrict" U.S. commerce. The administration can only rely on Section 301 to support tariffs that fall within the findings of that investigation.

One example is the administration's use of Section 301 to impose broad tariffs in response to concerns over forced labor and other Chinese trade practices. Although Section 301 has long been used to address unfair trade practices by China, challengers are expected to argue that extending those tariffs to categories of goods or countries not closely tied to the findings of the underlying USTR investigation exceeds the authority Congress delegated in the statute. Whether courts ultimately accept those arguments remains to be seen, but they illustrate that the next phase of tariff litigation is likely to focus less on whether the President possesses tariff authority in the abstract and more on whether the procedural and substantive requirements of the particular statute invoked have actually been met.

What To Do Now / How Proskauer Can Help?

Moving forward, importers may look to pursue a dual-track approach. On the one hand, companies may continue paying currently applicable tariffs while preserving compliance with existing customs obligations, recognizing that the replacement tariffs remain in effect unless and until they are invalidated. At the same time, importers may decide to preserve and pursue refund claims relating to both the now-invalidated IEEPA tariffs and any tariffs that are in the future invalidated under Section 301 or other statutory authority. Companies may also closely monitor ongoing litigation challenging the administration's reliance on alternative statutory authorities before making longer-term sourcing, pricing, or supply-chain decisions.

If you have any questions regarding tariff refunds or potential refund claims, contact the Proskauer team at tariffrefunds@proskauer.com.

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